

PROVINCE OF WESTERN CAPE

**WESTERN CAPE HEALTH
CARE WASTE MANAGEMENT
AMENDMENT BILL**

(As introduced)

(MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING)

[B 3—2010]

PROVINSIE WES-KAAP

**WES-KAAPSE
WYSIGINGSWETSONTWERP OP
DIE BESTUUR VAN
GESONDHEIDSORGAFVAL**

(Soos ingedien)

(MINISTER VAN PLAASLIKE REGERING, OMGEWINGSAKE EN ONTWIKKELINGSBEPLANNING)

[W 3—2010]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WOLUNGISO WOLAWULO
LWEZEMPILO LWEZINTO
EZIL AHLWAYO WENTSHONA
KOLONI**

(Njengoko wazisiwe)

(UMPHATHISWA WORHULUMENTE WOMMANDLA, IMICIMBI YEZOKUSI NGQONGILEYO NOCWANGCISO
LOPHUHLISO)

[B 3—2010]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

AMENDMENT BILL

To amend the Western Cape Health Care Waste Management Act, 2007, so as to align the terminology with that used in the National Environmental Management: Waste Act, 2008; to define or redefine certain expressions; to delete certain unnecessary definitions; to provide for the issuing of compliance notices; to amend the provisions relating to offences and penalties; to make further provision regarding regulations; to effect certain textual changes; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape as follows:—

Amendment of section 1 of Act 7 of 2007

1. Section 1 of the Western Cape Health Care Waste Management Act, 2007 (the principal Act), is amended— 5

(a) by the insertion after the definition of “audit” of the following definition:

“**by-product**’ means a substance that is produced as part of a process that is primarily intended to produce another substance or product and that has the characteristics of an equivalent virgin product or material;”;

(b) by the substitution for the definition of “disposal” of the following definition: 10

“**disposal**’ means the burial, deposit, discharge, placing or release of any waste into or onto any land;”;

(c) by the substitution for the definition of “disposal site” of the following definition:

“**disposal site**’ means any site or premises— 15

(a) used for the accumulation of waste with the purpose of disposing of that waste at that site or on those premises; and

(b) permitted so to be used by virtue of section 80(4) or 81 of the National Environmental Management: Waste Act or in terms of a waste management licence under section 49 of that Act;” 20

(d) by the substitution for the definition of “dump” of the following definition:

“**dump**’, in relation to health care waste, means to deposit or discharge or abandon, or cause or allow to be deposited or discharged or abandoned, in any manner or at any place other than is [set out] permitted by or in terms of this Act [or permitted in terms of section 20 of the Environment 25

Conservation Act, and the words “dumps”, “dumped” and “dumping” have corresponding meanings];”;

- (e) by the substitution in the definition of “health care waste” for the expression “subparagraph(a)” of the expression “paragraph (1)(a)”;
- (f) by the insertion after the definition of “National Minister” of the following definition: 5

“National Environmental Management: Waste Act’ means the National Environmental Management: Waste Act, 2008 (Act 59 of 2008);”;

- (g) by the deletion of the definition of “other waste”;
- (h) by the insertion after the definition of “person” of the following definition: 10

“prescribe’ means prescribe by regulation;”;

- (i) by the deletion of the definition of “secure area”;
- (j) by the substitution of the definition of “treatment facility” of the following definition:

“treatment facility’ means any site or premises— 15

(a) used to accumulate health care risk waste for the purpose of storage, recovery, treatment, reprocessing, recycling or sorting of that waste; and

(b) permitted so to be used by virtue of section 80(4) or 81 of the National Environmental Management: Waste Act, 2008, or in terms of a waste management licence under section 49 of that Act;” and 20

- (k) by the substitution for the definition of “waste” of the following definition:

“waste’—means any substance, whether or not that substance can be reduced, re-used, recycled and recovered—

(a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of; 25

(b) for which the generator has no further use for the purposes of production;

(c) that must be treated or disposed of; or

(d) that is identified as a waste by the National Minister by notice in the *Gazette*, 30

and includes waste generated by the mining, medical or any other sector, but excludes any by-product and any portion of waste that has been re-used, recycled or recovered.”.

Amendment of section 6 of Act 7 of 2007 35

2. Section 6 of the principal Act is amended by the substitution for paragraph (n) of subsection (2) of the following paragraph:

“(n) A generator, transporter, treater or disposer of heath care risk waste must, within [a] the prescribed period after the [promulgation] commencement of this Act, or within the prescribed period after starting to operate as such a generator, transporter, treater or disposer, as the case may be, register with the Department by submitting to the Department a duly completed registration form that is available from the Department.”. 40

Amendment of section 10 of Act 7 of 2007 45

3. Section 10 of the principal Act is amended—

- (a) by the addition of the word “and” at the end of paragraph (a) of subsection (1);
- (b) by the substitution for paragraphs (c) and (d) of subsection (2) of the following paragraphs: 50

“(c) requesting information regarding [the] health care [risk] waste from the person who is in control of the health care waste, or from the owner or the person in charge of the premises, site or vehicle;

(d) [examine and make] examining and making copies of or [take] taking extracts from any written record kept in terms of section 6(2)(j) and [request] requesting an explanation of any entry in the written or electronic record from the person who is in control of the written or 55

- electronic record, or from the owner or the person in charge of the premises, site or vehicle.”; and
 (c) by the deletion of subsections (3) and (4).

Insertion of section 10A in Act 7 of 2007

4. The following section is inserted in the principal Act after section 10: 5

“Compliance notices

10A. (1) An inspector may issue and serve a compliance notice as prescribed on a person in charge or control of any site or premises where health care waste has been or is being generated, handled, stored, treated or disposed of, calling upon that person to comply with the provisions of this Act or a condition of any applicable licence or permit relating to waste management. 10

(2) A compliance notice must stipulate —
 (a) the provision of the Act or condition of the licence or permit concerned which must be complied with; 15

(b) the act or omission constituting non-compliance;
 (c) the measures which must be taken to comply;
 (d) the date by which compliance must be completed; and
 (e) the possible consequences of non-compliance. 20

(3) An inspector may, at the request of the person served with a compliance notice extend the period for compliance, upon good cause shown, by issuing an amended compliance notice. 20

(4) A compliance notice remains in force until the date for compliance or any extension thereof, or the issue by the inspector of a compliance certificate as prescribed, whichever is the earlier. 25

(5) If a person served with a compliance notice has complied therewith, the inspector must issue a compliance certificate as prescribed as soon as reasonably possible.

(6) A person served with a compliance notice may, within the prescribed period, lodge with the inspector a statement disputing the notice and stating the grounds upon which it is disputed. 30

(7) The Provincial Minister may at the request of the person referred to in subsection (6), on good cause shown, in writing extend the period within which that person must lodge the statement.

(8) An inspector receiving a statement in terms of subsection (6) must, within the prescribed period, submit the compliance notice, the statement and any other document which he or she regards relevant to the Provincial Minister, who must decide whether or not the act or omission referred to in subsection (2)(b) justified the issuing of the compliance notice. 35

(9) The Provincial Minister must, within the prescribed period, if he or she finds that the issuing of the compliance notice—
 (a) was unjustified, set it aside; or
 (b) was justified, order that the compliance notice be complied with by the date contemplated in subsection (2)(d) or the later date determined by the Provincial Minister. 40 45

(10) The Provincial Minister may delegate the functions referred to in subsections (7) and (9) to an official in the Department.”.

Substitution of section 11 of Act 7 of 2007

5. The following section is substituted for section 11 of the principal Act:

“Offences and penalties [and consequences of criminal convictions] 50

11. (1) A person who contravenes, or fails to comply with —
 (a) any provision of section 5, 6 or 7(1); or
 (b) a compliance notice issued in terms of section [10(3)] 10A(1),

is guilty of an offence and upon conviction is liable to a fine or imprisonment for a period not exceeding **[five] 10** years, or to both a fine and imprisonment not exceeding **[five] 10** years.

(2) A person who is convicted of an offence referred to in subsection (1) and who persists after conviction in the act or omission that constituted the offence commits a continuing offence and is liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 20 days, or to both a fine and imprisonment not exceeding 20 days, in respect of each day that person persists with that act or omission.” 5

Substitution of section 14 of Act 7 of 2007 10

6. The following section is substituted for section 14 of the principal Act:

“Regulations and notices

14. (1) The Provincial Minister, **[may]** after consultation with the standing committee of the Provincial Parliament responsible for environmental affairs— 15

(a) must make regulations regarding matters that must be prescribed in terms of this Act; and

(b) may make regulations regarding any other aspect related to the management of health care waste.

(2) The Provincial Minister may, after consultation with the standing committee of the Provincial Parliament responsible for environmental affairs, by notice in the *Provincial Gazette* set targets for waste minimisation in general or for a specific institution or sector of generators, transporters, treaters or disposers **[by notice in the *Provincial Gazette*]**.”. 20

Short title and commencement 25

7. This Act is called the Western Cape Health Care Waste Management Amendment Act, 2010, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE
HEALTH CARE WASTE MANAGEMENT AMENDMENT BILL, 2010**

1. INTRODUCTION

The Amendment Bill amends the Western Cape Health Care Waste Management Act, 2007 (Act 7 of 2007), so as to align the terminology with those used in the National Environmental Management: Waste Act, 2008 (Act 59 of 2008); to correct certain inconsistencies in the Act and to provide for the issuing of a compliance notice.

Comment on Individual Clauses

Clause 1

Refers to definitions that are amended.

Clause 2

Amends section 6 and it provides for the registration of generators, transporters, treaters or disposers of health care risk waste.

Clause 3

Amends section 10 and it provides for powers of inspectors.

Clause 4

New insertion as section 10A, it provides for the issuing of compliance notices.

Clause 5

Substitution of section 11 to align offences and penalties.

Clause 6

Substitution of section 14, which provides for regulations and the setting of targets for waste minimisation.

Clause 7

Provides for the short title and commencement of the Amendment Act.

2. FINANCIAL IMPLICATIONS FOR STATE

The financial implications of the amendment of the Act are covered by the existing operational departmental budget.

3. DEPARTMENTS/INSTITUTIONS/BODIES CONSULTED

In drafting of this Draft Amendment Bill, the Department of Environmental Affairs and Development Planning has consulted with stakeholders. The Draft Amendment Bill was advertised in two newspapers (Afrikaans and English), electronic copies sent to all stakeholders on the Department's stakeholder database, tabled at the Premier's Coordinating Forum (16-17 November 09 — Beaufort West) as well as the Provincial Waste Management Forum (19 — 20 November 09 — Wilderness) to enable the public to comment on the Draft Amendment Bill.

The publishing of the Amendment Bill will allow for further stakeholder consultation. The following stakeholders have been consulted at this stage:

National Department:

Department of Environmental Affairs

Provincial Departments:

Department of the Premier: Legal Services

Department of the Premier: Policy Coordination

Department of Health

Department of Environmental Affairs and Development Planning (Chief Directorate:
Environmental and Land Management)

Other Stakeholders:

Western Cape municipalities

University of Stellenbosch

ALGEMENE VERDUIDELIKENDE NOTA

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

WYSIGINGSWETSONTWERP

Tot wysiging van die Wes-Kaapse Wet op die Bestuur van Gesondheidsorgafval, 2007, om die terminologie in ooreenstemming te bring met dié wat in die National Environmental Management: Waste Act, 2008 gebruik word; om sekere uitdrukkings te omskryf of te heromskryf; om sekere onnodige omskrywings te skrap; om voorsiening te maak vir die uitreiking van nakomingskennisgewings; om die bepalinge rakende misdrywe en strawwe te wysig; om verder voorsiening te maak betreffende regulasies; om sekere teksveranderinge aan te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

Wysiging van artikel 1 van Wet 7 van 2007

1. Artikel 1 van die Wes-Kaapse Wet op die Bestuur van Gesondheidsorgafval, 2007 (die Hoofwet), word gewysig— 5

(a) deur die omskrywing van “afval” deur die volgende omskrywing te vervang:

“**‘afval’** enige stof, hetsy daardie stof gereduseer, hergebruik, hersikuleer of herwin kan word—

(a) wat oortollig, ongewens, verwerp, weggegooi, verlaat of beskik is; 10
(b) waarvoor die genereerder geen verdere gebruik het nie vir die doel van produksie;

(c) wat behandel of beskik moet word; of

(d) wat deur die Nasionale Minister by kennisgewing in die *Staatskoerant* as 'n afval geïdentifiseer is, 15

en ook afval genereer deur die mynbou-, mediese of enige ander sektor, maar nie enige neweproduk en enige deel van afval wat hergebruik, hersikuleer of herwin is nie.”

(b) deur die omskrywing van “ander afval” te skrap;

(c) deur die omskrywing van “behandelingsfasiliteit” deur die volgende omskrywing te vervang: 20

“**‘behandelingsfasiliteit’** 'n terrein of perseel —

(a) wat gebruik word om gesondheidsrisiko-afval op te gaar met die doel om daardie afval te berg, te herwin, te behandel, te herprosesseer, te hersikuleer of te sorteer; en

- (b) wat toegelaat word om aldus gebruik te word kragtens artikel 80(4) of 81 van die National Environmental Management: Waste Act, 2008, of ingevolge 'n afvalbestuurslisensie ingevolge artikel 49 van daardie Wet;”.
- (d) deur die omskrywing van “beskikking” deur die volgende omskrywing te vervang: 5
 “**‘beskikking’** die begrawe, aflaai, afvoer, plasing of uitlating van enige afval in of op enige grond;”;
- (e) deur die omskrywing van “beskikkingsterrein” deur die volgende omskrywing te vervang: 10
 “**‘beskikkingsterrein’** enige terrein of perseel —
 (a) wat gebruik word vir die opgaring van afval met die doel om op daardie terrein of perseel oor daardie afval te beskik;
 (b) wat aldus gebruik kan word ingevolge artikel 80(4) of 81 van die National Environmental Management: Waste Act, 2008, of ingevolge 'n afvalbestuurslisensie ingevolge artikel 49 van daardie Wet;” 15
- (f) deur in die omskrywing van “gesondheidsorgafval” die uitdrukking “subparagraaf (a)” deur die uitdrukking “paragraaf (1)(a)” te vervang;
- (g) deur die volgende omskrywings na die omskrywing van “Nasionale Minister” in te voeg: 20
 “**‘National Environmental Management: Waste Act’** die National Environmental Management: Waste Act, 2008 (Wet 59 van 2008);” en
 “**‘neweproduk’** 'n stof wat voortgebring word as deel van 'n proses wat primêr bedoel is om 'n ander stof of produk te produseer en wat die eienskappe van 'n ekwivalente onverwerkte produk of materiaal het;” 25
- (h) deur die omskrywing van “stort” deur die volgende omskrywing te vervang:
 “**‘stort’**, met betrekking tot gesondheidsorgafval, om af te laai of af te voer, of om te veroorsaak of toe te laat dat dit afgelaai of afgevoer word, op enige manier of op enige plek behalwe soos by of ingevolge hierdie Wet **[uiteengesit] toegelaat [, of toegelaat ingevolge artikel 20 van die Wet op Omgewingsbewaring, en die woorde “gestort” en “storting” het ooreenstemmende betekenisse];**” 30
- (i) deur die omskrywing van “veilige gebied” te skrap; en
- (j) deur die volgende omskrywing na die omskrywing van “vervoerder” in te voeg: 35
 “**‘voorskryf’** by regulasie voorskryf;”.

Wysiging van artikel 6 van Wet 7 van 2007

2. Artikel 6 van die Hoofwet word gewysig deur paragraaf (n) van subartikel (2) deur die volgende paragraaf te vervang:

“(n) 'n Genereerder, vervoerder, behandelaar of besikker van 40
 gesondheidsorgrisiko-afval moet, binne [’n] die voorgeskrewe tydperk na die **[afkondiging] inwerkingtreding** van hierdie Wet, of binne die voorgeskrewe tydperk na die aanvang van bedrywighede as so 'n genereerder, vervoerder, behandelaar of besikker, na gelang van die geval, by die Departement registreer deur 'n behoorlik ingevulde 45
 registrasievorm, wat by die Departement beskikbaar is, by die Departement in te dien.”.

Wysiging van artikel 10 van Wet 7 van 2007

3. Artikel 10 van die Hoofwet word gewysig —

- (a) deur die woord “en” aan die einde van paragraaf (a) van subartikel (1) by te voeg; 50
- (b) deur paragraaf (c) van subartikel (2) deur die volgende paragraaf te vervang:
 “(c) aanvra van inligting betreffende **[die gesondheidsorgrisiko-afval]** gesondheidsorgafval van die persoon wat in beheer van die

- gesondheidsorgafval is, of van die eienaar of die persoon in beheer van die perseel, terrein of voertuig;” en
(c) deur subartikels (3) en (4) te skrap.

Invoeging van artikel 10A in Wet 7 van 2007

4. Die volgende artikel word na artikel 10 van die Hoofwet ingevoeg: 5

“Nakomingskennisgewings

- 10A.** (1) ’n Inspekteur kan ’n nakomingskennisgewing soos voorgeskryf uitreik en beteken aan ’n persoon in bevel of beheer van enige terrein of perseel waar gesondheidsorgafval gegenereer, hanteer, geberg, behandel of beskik is of word, en van daardie persoon vereis om die bepalings van hierdie Wet of ’n voorwaarde van enige toepaslike lisensie of permit rakende afvalbestuur na te kom. 10
- (2) ’n Nakomingskennisgewing moet die volgende bepaal:
- (a) die betrokke bepaling van die Wet of voorwaarde van die lisensie of permit wat nagekom moet word; 15
- (b) die handeling of versuim wat nienakoming uitmaak;
- (c) die maatreëls wat getref moet word om na te kom;
- (d) die datum waarteen nakoming afgehandel moet word; en
- (e) die moontlike gevolge van nienakoming.
- (3) ’n Inspekteur kan, op versoek van die persoon aan wie ’n nakomingskennisgewing beteken is, by aanvoering van gegronde redes, die tydperk vir nakoming verleng deur ’n gewysigde nakomingskennisgewing uit te reik. 20
- (4) ’n Nakomingskennisgewing bly van krag tot die datum vir nakoming of enige verlenging daarvan, of die uitreiking deur die inspekteur van ’n nakomingsertifikaat soos voorgeskryf, wat ook al die vroegste is. 25
- (5) Indien ’n persoon aan wie ’n nakomingskennisgewing beteken is, daaraan voldoen het, moet die inspekteur so gou as wat redelikerwys moontlik is ’n nakomingsertifikaat soos voorgeskryf uitreik.
- (6) ’n Persoon aan wie ’n nakomingskennisgewing beteken is, kan binne die voorgeskrewe tydperk ’n verklaring by die inspekteur indien waarin die kennisgewing betwis word, met vermelding van die gronde waarop dit betwis word. 30
- (7) Die Provinsiale Minister kan op versoek van die persoon in subartikel (6) bedoel, by aanvoering van gegronde redes, die tydperk waarbinne daardie persoon die verklaring moet indien, skriftelik verleng. 35
- (8) ’n Inspekteur wat ’n verklaring ingevolge subartikel (6) ontvang, moet binne die voorgeskrewe tydperk die nakomingskennisgewing, die verklaring en enige ander dokument wat hy of sy as tersaaklik beskou, aan die Provinsiale Minister voorlê, wat moet besluit of die handeling of versuim in subartikel (2)(b) bedoel, die uitreiking van die nakomingskennisgewing regverdig. 40
- (9) Die Provinsiale Minister moet binne die voorgeskrewe tydperk, indien hy of sy bevind dat die uitreiking van die nakomingskennisgewing — 45
- (a) ongeregverdig was, dit tersyde stel; of
- (b) geregverdig was, gelas dat die nakomingskennisgewing nagekom moet word teen die datum in subartikel (2)(d) bedoel of die later datum wat die Provinsiale Minister bepaal.
- (10) Die Provinsiale Minister kan die funksies in subartikels (7) en (9) bedoel, aan ’n beampte in die Departement delegeer.”. 50

Vervanging van artikel 11 van Wet 7 van 2007

5. Artikel 11 van die Hoofwet word deur die volgende artikel vervang:

“Misdrywe, strawwe [en gevolge van strafregtelike skuldbevinding]

11. (1) ’n Persoon wat [strydig is met of weier om] —

- (a) enige bepaling van artikel 5, 6 of 7(1); of 5
 (b) ’n nakomingskennisgewing uitgereik ingevolge artikel [10(3)]
 10A(1),

oortree of versuim om daaraan te voldoen, begaan ’n misdryf en is by skuldigbevinding strafbaar met ’n boete of gevangenisstraf vir ’n tydperk van hoogstens [vyf] 10 jaar, of met sowel ’n boete as gevangenisstraf van hoogstens [vyf] 10 jaar. 10

(2) ’n Persoon wat skuldig bevind is aan ’n misdryf in subartikel (1) bedoel en wat na skuldigbevinding voortgaan met die handeling of versuim wat die misdryf uitmaak, begaan ’n voortdurende misdryf en is by skuldigbevinding strafbaar met ’n boete van hoogstens R1 000 of met gevangenisstraf vir ’n tydperk van hoogstens 20 dae, of met sowel sodanige boete as gevangenisstraf van hoogstens 20 dae ten opsigte van elke dag waarop daardie persoon met daardie handeling of versuim voortgaan.” 15

Vervanging van artikel 14 van Wet 7 van 2007

6. Artikel 14 van die Hoofwet word deur die volgende artikel vervang: 20

“Regulasies en kennisgewings

14. (1) Die Provinsiale Minister, [kan] na oorleg met die staande komitee van die Provinsiale Parlement verantwoordelik vir omgewingsake —

- (a) moet regulasies uitvaardig oor aangeleenthede wat ingevolge hierdie Wet voorgeskryf moet word; en 25
 (b) kan regulasies uitvaardig oor enige ander aspek van die bestuur van gesondheidsorgafval.

(2) Die Provinsiale Minister kan, na oorleg met die staande komitee van die Provinsiale Parlement verantwoordelik vir omgewingsake, by kennisgewing in die Provinsiale Koerant, teikens stel om afval in die algemeen tot die minimum te beperk of vir ’n spesifieke instelling of sektor genereerders, vervoerders, behandelars of beskikkers [by kennisgewing in die Provinsiale Koerant].” 30

Kort titel en inwerkingtreding

7. Hierdie Wet heet die Wes-Kaapse Wysigingswet op die Bestuur van Gesondheidsorgafval, 2010, en tree in werking op ’n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal. 35

**MEMORANDUM OOR DIE OOGMERKE VAN DIE
WYSIGINGSWETSONTWERP OP DIE BESTUUR VAN
GESONDHEIDSORGAFVAL, 2010**

1. INLEIDING

Die Wysigingswetsontwerp wysig die Wet op die Bestuur van Gesondheidsorgafval, 2007 (Wet 7 van 2007) om dit in lyn te bring met die terminologie wat gebruik word in die Nasionale Omgewingsbestuur Wet op die Bestuur van Afval, 2008 (Wet 59 van 2008); om sekere aspekte reg te stel en te voorsien vir die dien van nakomingskennisgewings.

KOMMENTAAR OOR INDIVIDUELE KLOUSULES

Klousule 1

Verwys na die woordskrywings wat gewysig word.

Klousule 2

Wysig klousule 6 en voorsien vir die registrasie van genereerder, vervoerder, behandelaar of besikker van gesondheidsorgisiko-afval.

Klousule 3

Wysig klousule 10 wat die bevoegdheide van inspekteurs omskryf.

Klousule 4

Nuwe invoeging van klousule 10A om voorsiening te maak vir die dien van nakomingskennisgewings.

Klousule 5

Vervanging van klousule 11 om misdrywe en strawwe in lyn te bring.

Klousule 6

Vervanging van klousule 14 en dit voorsien vir die regulering en stel van teikens vir afval vermindering.

Klousule 7

Maak voorsiening vir die kort titel en inwerkingtreeding van die wysigingswetsontwerp.

2. FINANSIËLE IMPLIKASIES VIR DIE STAAT

Die finansiële implikasies van die wysiging van die Wet word gedek deur die operasionele departementele begroting.

3. DEPARTEMENTE INRIGTINGS LIGGAME GERAADPLEEG

Met die opstel van die Konsepwysigingswetsontwerp het die Departement van Omgewingsake en Ontwikkelingsbeplanning alreeds met rolspelers gekonsulteer. Die Konsepwysigingswetsontwerp was geadverteer in twee nuusblaaie (Afrikaans en Engels), elektroniese kopieë is ook gestuur aan al die belanghebbendes op die Departement se Belanghebbende databasis, dit is ook voorgelê by die Premier se Koördinerings Forum 16-17 November 09 — Beaufort Wes) asook by die Provinsiale Afvalbestuur Forum (19-20 November 09 — Wilderness) om te verseker dat die publiek die geleentheid het om kommentaar te lewer op die Konsepwysigingswetsontwerp. Die publiserings van die Wysigingswetsontwerp sal verdere konsultasie verseker. Die volgende rolspelers was alreeds gekonsulteer op hierdie stadium:

Nasionale Departement:
Departement van Omgewingsake

Provinsiale Departemente:

Departement van die Premier: Regsdienste

Departement van die Premier: Beleidskoördinerings

Departement van Gesondheid

Departement van Omgewingsake en Ontwikkelingsbeplanning (Hoofdirektoraat:
Omgewings- en Grondbestuur)

Ander Belanghebbendes:

Wes-Kaapse munisipaliteite

Universiteit van Stellenbosch

INKCAZELO NGOKUBANZI:

[] Amagama abhalwe ngqindilili kwizibiyeli ezisisikwere abonisa oko kuye kwashiywa kule ikhoyo imithetho.

_____ Amagama akrwelwe umgca ongqindilili ngaphantsi abonisa oko kufakelweyo kule mithetho ikhoyo.

UMTHETHO OYILWAYO WOLUNGISO

Injongo yawo ikukwenza izilungiso kuMthetho oyiWestern Cape Health Care Waste Management Act 7, ka-2007, khona ukuze kungqanyaniswe isigama neso sisetyenziswe kuMthetho oyiNational Environmental Management: Waste Act 59, ka-2008; kucaciswe okanye kucaciswe ngokutsha amabinzana amagama athile; kucinywe iinkcazo-magama ezithile ezingeyomfuneko; kulungiselelwe nokukhutshwa kwezaziso zothotyelo; ukwenza izilungiso kwimihlathi ephathelele kutyeshelo nakwizohlwayo; ukufaka eminye imihlathi ephathelele kwimigaqo; ukufakela iinguqulelo ezithile ezenziweyo kwindlela ekubhalwe ngayo; kananjalo kulungiselelwe neminye imiba enxulumene nawo.

NGOKO KE KUWISWA UMTHETHO yiPalamente yePhondo leNtshona Koloni ngolu hlobo lulandelayo:—

Ukulungiswa kwecandelo 1 loMthetho 7 ka-2007

1. Icandelo 1 loMthetho oyi Western Cape Health Care Waste Management Act, ka-2007 (uMthetho oyiNtloko), lenziwa izilungiso—

(a) ngokufakela le nkcazo ilandelayo emva kwenkcazo “yohlolo-zincwadi”:

“**‘isiveliso esilisoloty’** sithetha into ethe yaveliswa njengenxenye yomsebenzi obusenzelwa ukuvelisa enye into okanye imveliso neneempawu ezifanayo nezaleyo mveliso ingekasetyenziswa okanye isixhobo;”;

(b) ngokuthi endaweni yenkcazo yegama “ukulahla” kufakwe le nkcazo ilandelayo:

“**‘ukulahla’** kuthetha ukungcwaba, ukugalela, ukukhupha, ukubeka okanye ukukhuphela nayiphi na inkunkuma kuwo okanye phezu kwawo nawuphi na umhlaba;”;

(c) ngokuthi endaweni yenkcazo yegama “indawo yokulahlela” kufakwe le nkcazo ilandelayo:

“**‘indawo yokulahlela’** nasiphi na isiza okanye amasango—

(a) asetyenziselwa ukuqokelelela inkunkuma ngeenjongo zokuyilahla loo nkunkuma kuloo ndawo okanye kuloo masango; kunye

(b) ekuvumelekileyo ukuba asetyenziswe ngolo hlobo ngokwecandelo 80(4) okanye 81 loMthetho oyiNational Environmental Management:

5

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15

20

- Waste Act okanye ngokwemiqathango yelayisenisi yolawulo |
Iwenkunkuma phantsi kwecandelo 49 laloo Mthetho”;
- (d) ngokuthi endaweni yenkcazo yegama ““ukulahlela”” kufakwe le nkcazo ilandelayo: 5
 “**“ukulahlela**”, ngokuphathelele kwinkunkuma yolondolozo lwempilo kuthetha ukugalela okanye ukukhupha okanye ukushiya okanye ukwenza okanye ukuvumela ukuba kugalelwe okanye kukhutshwe okanye kushiye, ngalo naluphi na uhlobo okanye kuyo nayiphi na indawo engeyiyo le [**ichazwe**] ivumelekileyo ngokwalo Mthetho [okanye ivumelekileyo ngokwemiqathango yecandelo 20 loMthetho oyiEnvironment Conservation Act, kwaye la magama “dumps”, “elahliweyo” kunye “elahlwayo”];”;
- (e) ngokuthi endaweni yenkcazo yebinzana “umhlathana(a)” kwinkcazo “yenkunkuma yolondolozo lwempilo” kufakwe ibinzana “umhlathi (1)(a)”;
- (f) ngokuthi emva kwenkcazo “yoMphathiswa weSizwe” kufakelwe le nkcazo ilandelayo: 15
 uMthetho oyi“**‘National Environmental Management: Waste Act’** uthetha uMthetho oyiNational Environmental Management: Waste Act, ka-2008 (uMthetho 59 ka-2008);”;
- (g) ngokucima inkcazo yebinzana elithi “enye inkunkuma””; 20
- (h) ngokuthi emva kwenkcazo yegama “umntu” kufakelwe nale nkcazo ilandelayo:
 “**“ukumisela**’ kuthetha ukumisela ngomgaqo;”;
- (i) ngokucima inkcazo yebinzana elithi “indawo ekhuselekileyo”;
- (j) ngokuthi endaweni yenkcazo yebinzana “isibonelelo sococo” kufakwe na le nkcazo ilandelayo: 25
 “**“isibonelelo sococo**’ sithetha isiza okanye amasango—
- (a) asetyenziselwa ukuqokelelela inkunkuma yolondolozo lwempilo ebeka emngciphekweni ngeenjongo zokuyigcina, zokuyibuyisela, zokuyicoca, zokuyisebenza kwakhona, zokuyivuselela okanye zokuyihlela loo nkunkuma; kunye 30
- (b) ekuvumelekileyo ukuba asetyenziswe ngolo hlobo ngokwecandelo 80(4) okanye 81 loMthetho oyiNational Environmental Management: Waste Act 2008 okanye ngokwemiqathango yelayisenisi yolawulo Iwenkunkuma phantsi kwecandelo 49 laloo Mthetho”;
- (k) ngokuthi endaweni yenkcazo yegama “inkunkuma” kufakwe le nkcazo ilandelayo: 35
 “**“inkunkuma**’ — ithetha nayiphi na into, nokuba loo nto ingacuthwa, inokuphinda isetyenziswe, inokuvuselelwa ibuyiselwe—
- (a) eyintsalela, engafunwayo, ekhatyiweyo, elahliweyo, okanye eshiyiweyo; 40
- (b) okanye engenakuphinda isetyenziswe ngumenzi-nkunkuma ekuveliseni;
- (c) ekufuneka icocwe okanye ilahlwe; okanye 45
- (d) echazwa njengenkunkuma nguMphathiswa weSizwe ngesaziso esikwiGazethi, 45
 Nebandakanya inkunkuma eyenziwe licandelo lezimbiwa, lonyango okanye naliphi na elinye icandelo, kodwa ke ingasibandakanyi nasiphi na isiveliso esilisolotyayo nayo nayiphi na inxenye yenkunkuma ethe yasetyenziswa kwakhona, yavuselelwa okanye yabuyiselwa.”. 50

Inguqulo kwicandelo 6 loMthetho 7 ka-2007

2. Icandelo 6 loMthetho oyintloko owenziwa izilungiso liyalungiswa ngokuthi endaweni yomhlathana (2) kufakwe umhlathi (n):

- “(n) Umenzi wenkunkuma, umthuthi, umcoci okanye umlahli wenkunkuma yolondolozo lwempilo ebeka emngciphekweni kufuneka [**a**] singadlulanga isithuba esi simiselweyo emva [**kokusebenza**] kokuqalisa kwaloMthetho, okanye singadlulanga isithuba esimiselweyo emva kokuqalisa njengaloo menzi wenkunkuma, umthuthi, umcoci okanye umlahli, ngokwemeko leyo, 55

makabhalise kwiSebe eli ngokuthi angenise kwiSebe eli ifomu yokubhalisa ezalisiweyo efumaneka kwiSebe eli.”.

Inguqulo kwicandelo 10 loMthetho 7 ka-2007

3. Icandelo 10 loMthetho oyintloko liyalungiswa—
- (a) ngokuthi kufakelwe igama “kwaye” ekupheleni komhlathi (a) womhlathana (1); 5
- (b) ngokuthi endaweni yemihlathi (c) no-(d) yecandelwana (2) kufakwe le mihlathi ilandelayo:
- “(c) kucelwa iinkcukacha malunga nenkunkuma yolondolozo lwempilo [ebeka emngciphekweni] umntu olawula inkunkuma yolondolozo lwempilo, okanye kumnini okanye kumntu ongumlawuli wamasango, wesiza okanye isithuthi; 10
- (d) kuhlolwa kwaye kusenziwa neekopi zalo naliphi na irekhodi elibhaliweyo eligcinwe ngokwemigaqo yecandelo 6(2)(j) okanye kuthathwa izicatshulwa kulo kuze ke kucelwe nenkcazelo ngayo nayiphi na into efakiweyo kweli rekhodi libhaliweyo okanye likwikhompuyutha, okanye kumnini okanye kumntu ongumlawuli wamasango lawo, wesiza eso okanye wesithuthi eso.”; kunye 15
- (c) nangokucima amacandelwana (3) nele-(4).

Ufakelo lwecandelo 10A kuMthetho 7 ka-2007 20

4. Oku kulandelayo kufakelwe kuMthetho oyintloko emva kwecandelo 10:

“Izaziso zothotyelo

- 10A.** (1) Umhloli usenokuthi akhuphele ahambisele isaziso sothotyelo esimiselweyo umntu owongamele okanye olawula naso nasiphi na isiza okanye nawaphi na amasango ebekukhutshwe okanye ekukhutshwa kuwo, ekusetyenzwa kuwo, ekucocwa kuwo okanye ekulahlwa inkunkunkuma yolondolozo lwempilo, esiyalela loo mntu ukuba makayithobele imiqathango ebekwa ngulo Mthetho okanye ekutshwe phantsi kwayo ilayisenisi okanye imvume emalunga nolawulo lwenkunkuma. 25
- (2) Isaziso sothotyelo kufuneka sichaze — 30
- (a) le miqathango yoMthetho lo okanye yelayisenisi okanye yemvume kufuneka ithotyelwe;
- (b) le nto yenziweyo okanye ingenziwanga ilutyeshelo;
- (c) loo manyathelo afane ukuthathwa ukuze kube kuyathotyelwa;
- (d) umhla elufanele kufezekiswa ngawo uthotyelo olo; kunye 35
- (e) nokunokuthi kube sisiphumo sokungathobeli.
- (3) Umhloli unokuthi, ngokucelwa ngumntu lowo ukhutshelwe isaziso sothotyelo, alathise ixesha lothotyelo, xa kuthe kwanikwa isizathu esibonakalayo, ngokuthi akhuphe esinye isaziso sothotyelo esenziwe inguqulo. 40
- (4) Isaziso sothotyelo sihlala sisebenza kude kuye kuba nguloo mhla wothotyelo okanye lowo luthe lwatshintshelwa kuwo, okanye ukukhutshwa kwesiqinisekiso sothotyelo ngumhloli, njengoko kumiselwe, nokuba yeyiphi na into ebitha yenzeka kuqala.
- (5) Ukuba ngaba umntu obekhutshelwe isaziso sothotyelo uye wasithobela, umhloli kufuneka akhuphe isiqinisekiso sothotyelo njengoko simiselwe ngokukhawuleza kangangoko. 45
- (6) Umntu okhutshelwe isaziso sothotyelo usenokuthi, lingadlulanga ixesha elimiselweyo, afake inkcazo kumhloli esiphikisa isaziso eso, exela nemihlaba asiphikisa phantsi kwayo. 50
- (7) UMphathiswa wePhondo usenokuthi ngokucelwa ngulo mntu ukhankanywe kwicandelwana (6), ngokwesizathu esivakalayo esithe sanikwa, alandise ngento ebhaliweyo ixesha afanele ukuyingenisa ngayo inkcazo lo mntu.
- (8) Umhloli ofumana le nkcazo ikwicandelwana (6) kufuneka, lingadlulanga eli xesha libekiweyo, angenise isaziso sothotyelo, inkcazo le 55

kunye naliphi na elinye iphepha abona lifanelekile kuMphathiswa wePhondo, oya kuthi ke yena agqibe ukuba le nto yenziweyo okanye ingenziwanga ikhankanywe kwicandelwana (2)(b) ikufanele na ukukhutshelwa isaziso sothotyelo.

(9) UMphathiswa wePhondo kufuneka, lingadlulanga ixesha elimiselweyo, xa efanisa ukuba ukukhutshwa kwesaziso sothotyelo—

(a) sasingafanelekanga, asirhoxise; okanye

(b) sasifanelekile, ayalele ukuba isaziso sothotyelo eso masithotyelwe ungadlulanga lo mhla uxelwa kwicandelwana (2)(d) okanye omnye umhla othe wabekwa nguMphathiswa wePhondo.

(10) UMphathiswa wePhondo usenokuthi le misebenzi ikhankanywe kwicandelwana (7) nele-(9) ayinikezele kwigosa elilapha kwiSebe eli.”.

Inguqulo kwicandelo 11 loMthetho 7 ka-2007

5. Eli candelo lilandelayo lithatha indawo yecandelo 11 loMthetho oyintloko owenziwa izilungiso:

“Utyeshelo nezohlwayo [neziphumo zokubanjelwa ukwaphula umthetho]

11. (1) Umntu otyeshela okanye osilelayo ekuthobeleni —

(a) nawuphi na umqathango wecandelo 5, 6 okanye 7(1); okanye

(b) Isaziso sothotyelo esikhutshwe ngokwecandelo [10(3)] 10A(1), unetyala lotyeshelo kwaye apho athe wagwetywa uyakufumana isohlwayo okanye avalelwe entolongweni isithuba esingadlulanga kwiminyaka [emihlanu] neli-10, okanye azinikwe zozibini ezi zigwebo, isohlwayo nokuvalelwa entolongweni iminyaka engadlulanga [emihlanu] neli-10 .

(2) Umntu othe wafunyaniswa enetyala ngolu tyeshelo lukhankanywe kwicandelwana (1) nothi emva kokuba egwetyiwe aphinde aqhube enze olu tyeshelo aze agwetywe isohlwayo singadlulanga kwi-R1 000 okanye ukuvalelwa entolongweni isithuba esingadlulanga kwiintsuku ezingama-20, okanye zombini izohlwayo nokuvalelwa entolongweni iintsuku ezingadlulanga kuma-20, ngosuku ngalunye athe loo mntu waphinda waqhuba ngeso senzo okanye ngolo tyeshelo.”.

Inguqulo kwicandelo 14 loMthetho 7 ka-2007

6. Eli candelo lilandelayo lithatha indawo yecandelo 14 loMthetho oyintloko:

“Imigaqo nezaziso

14. (1) UMphathiswa wePhondo, [usenokuthi] emva kokuthethana nekomiti emileyo yePalamente yePhondo ejongene nemicimbi yeNdalo esingqongileyo—

(a) kufuneka enze imigaqo ephathelele kwimiba efanele kumiselwa ngokwalo Mthetho; kwaye

(b) usenokuthi enze imigaqo ephathelele kuyo nayiphi na enye inkalo enxulumene nolawulo lwenkunkuma yolondolozo lwempilo.

(2) UMphathiswa wePhondo, emva kokuthethana nekomiti emileyo yePalamente yePhondo ejongene nemicimbi yeNdalo esingqongileyo, ngesaziso esikwiGazethi yePhondo usenokuthi abeke iinkalo emakujoliswe kuzo zokucuthwa kwenkunkuma ngokubanzi okanye azibekele iziko elithile okanye icandelo elithile elenza inkunkuma, abathuthi, abacoci okanye abalahli abathile [ngesaziso esikwiGazethi yePhondo].”.

Isihloko esifutshane nokuqalisa kwawo

7. Lo Mthetho kuthiwa nguMthetho Wolungiso woLawulo lwezeMpilo lweZinto eziLahlwayo weNtshona Koloni ka-2010, kwaye uya kuqalisa ukusebenza kumhla oya kubekwa yiNkulumbuso yePhondo oya kwaziswa kwiGazethi yePhondo.

**IMEMORANDAM NGEMIBA YOMTHETHO OSAYILWAYO
WOLAWULO LOKULAWULO KWEZEMPILO WENTSHONA
KOLONI, 2010**

1. INTSHAYELELO

Lo Mthetho uLungisayo wenza izilungiso kuMthetho oyiWestern Cape Health Care Waste Management Act, 2007 (uMthetho 7 ka-2007), khona ukuze kungqamaniseke isigama sawo neso sisetyenziswa kuMthetho oyiNational Environmental Management: Waste Act, 2008 (uMthetho 59 ka-2008); kulungiswe neendawo ezithile ezingangqinelaniyo kulo Mthetho, kananjalo kufakwe nemiqathango yokukhutshwa kwesaziso sothotyelo.

IINGCACISO NGEMIHLATHI

Umhlathi 1

Ubhekisele kwiinkcazo-magama ezenziwe izilungiso.

Umhlathi 2

Wenza izilungiso kwicandelo 6 kwaye ibandakanya nokubhaliswa kwabenzi benkunkuma, kwabathuthi, kwabacoci okanye abalahli benkunkuma yolondolozo lwempilo ebeka emngciphekweni.

Umhlathi 3

Wenza izilungiso kwicandelo 10 kwaye inikezela amagunya abahloli.

Umhlathi 4

Ufakelo olutsha ngokwecandelo 10A, olubandakanya ukukhutshwa kwezaziso zothotyelo.

Umhlathi 5

Uthatha indawo yecandelo 11 kungqanyaniswa ngawo izenzo zotyeshelo nezohlwayo.

Umhlathi 6

Uthatha indawo yecandelo 14, ubonelela ngemigaqo nokubekwa kweenkalo zojoliso ekucuthweni kwenkunkuma.

Umhlathi 7

Unika isihloko esifutshane nomhla wokuqalisa kwawo ukusebenza uMthetho woLungiso.

2. UCHAPHAZELEKO LUKARHULUMENTE NGASEZIMALINI

Uchaphazeleko ngokwasezimalini ngenxa yokwenziwa kwezilungiso kulo Mthetho lulungiselelwe kolu hlahlo-mali lokusebenza lweSebe lukhoyo.

3. AMASEBE/AMAZIKO/ IZIGQEBA EKUTHETHENWE NAZO

Ekuqulunqeni lo Mthetho oYilwayo oFakela imiBandela, iSebe leMicimbi yokusiNgqongileyo noCwanciso loPhuhliso liqhagamshelene nabachaphazelekayo. Lo Mthetho oYilwayo oFakela imiBandela wapapashwa kumaphepha-ndaba amabini (elesibhulu nelesiNgesi), iikopi zelektroni zathunyelwa kubo bonke abachaphazelekayo kwithala lolwazi leSebe, yaziswa kwisiGqeba esiQuquzelelayo seNkulumbuso (16-7 Novemba 09 —eBeaufort West) nakwisigqeba sabalawuli boNgcoliseko (19-20) Novemba 09 —Wilderness) ukwenzela ukuba uwonkewonke anike uluvo lwakhe ngalo Mthetho oYilwayo oFakela imiBandela.

Upapasho lwaloMthetho uYilwayo luzakuvumela uqhagamshelwano olubanzi nabachaphazelekayo. Aba bachaphazeleki balandelayo sebeqhagamshalwe kweli thuba:

ISebe leSizwe:
iSebe leMicimbi yendalo esiNgqongileyo

Amasebe ephondo:
ISebe leNkulumbuso yePhondo: iiNkonzo zezoMthetho Legal Services
ISebe leNkulumbuso yePhondo: uNxibelelaniso loMgaqo-nkqubo
ISebe lezeMpilo
ISebe leMicimbi yeNdalo esingqongileyo noCwangciso loPhuhliso (iCandelo
Lomlawuli lesebe lezendalo nolawulo lwemihlaba).

Amanye amaqela abachaphazelekayo:
ooMasipala baseNtshona Koloni
Iziko leMfundo enomsila iStellenbosch/iDyunivesiti yaseStellenbosch

